IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5146 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SURAJBEN VALJIBHAI CHUN KOLI

Versus

DISTRICT MAGISTRATE

Appearance:

1. Special Civil Application No. 5146 of 2001

MS DR KACHHAVAH for Petitioner No. 1

MR KT DAVE AGP for Respondents No. 1-3

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 30/10/2001

ORAL JUDGEMENT

1. In exercise of powers under Section 3 (2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ('the Act' for short), District Magistrate, Surendranagar vide order dated April 16, 2001, Annexure A to the

petition, detained the petitioner detenu.

2. The averments made in the petition and the grounds of detention manifest that the detaining authority has considered the petitioner as a bootlegger within the meaning of section 2 (b) of the Act as six cases under the Prohibition Act and one case for the offence punishable under the provisions of Indian Penal Code are registered against the petitioner which are either pending for investigation or trial and statements of three anonymous witnesses are also recorded in unregistered cases and, therefore, according to the detaining authority, the activities of the petitioner are prejudicial to be maintenance of public order and public health and the powers under Section 9 (2) of the Act are exercised by the detaining authority while detaining the petitioner by not disclosing the identity of those witnesses.

3. By filing this petition under Article 226 of the Constitution, the petitioner has assailed the impugned order of detention on various grounds and prayed to issue a writ of habeas corpus or any other appropriate writ, order or direction quashing the impugned order of detention and setting the petitioner at liberty forthwith.

4. Though the petitioner has assailed the impugned order of detention on various grounds, Ms. Kachhavah, learned advocate for the petitioner has restricted her arguments on the aspect of delay in recording the order of detention without giving satisfactory explanation on the part of the detaining authority and therefore according to her, the order of detention is vitiated. Besides this, she has also contended that in the impugned grounds of detention, the detaining authority has considered six cases registered against the petitioner under the Prohibition Act. They are cases of the years of 1998 to 2000. According to the learned advocate for the petitioner, on the basis of the said cases, the petitioner's activities cannot be said to be prejudicial to the maintenance of public order. So far as the last case registered against the petitioner is concerned, it is registered on December 9, 2000 whereas the impugned order of detention came to be passed on April 16, 2001. Therefore, according to the learned advocate for the petitioner, the order of detention is passed after a period of four months. On account of delay of four months which is not explained by the detaining authority, the order of detention is vitiated and on this sole ground the petition deserves to be allowed.

5. Mr. K.T. Dave, learned AGP has appeared on behalf of the respondents and opposed the petition by making oral submissions. He, however, does not dispute the factual aspect of delay in passing the order of detention from the date of registration of the last offence. He, therefore, urged to pass appropriate order in light of the settled principles enunciated by the Supreme Court as well as this Court in this regard.

6. I have considered the submissions advanced by the learned advocates appearing for the parties. I have also perused the averments made in the petition as well as the documents annexed therewith and the impugned order.

7. There is no manner of doubt that six offences registered against the petitioner are of 1998 to 2000. The last offence is registered on December 9, 2000 whereas the impugned order of detention came to be passed on April 16, 2001. Therefore there is a delay of more than four months in passing the impugned order of detention.

8. In the case of Anand Prakash v. State of UP, AIR 1990 SC 516 - it has been held that if no satisfactory explanation for delay in passing the order of detention is given, the detention is vitiated.

7. Similar view is expressed by this Court in the case of Elesh Nandubhai Patel v. Commissioner of Police, 1997 (1) GLH 381.

8. Applying the principles enunciated by the Supreme Court and this Court in the above cited judgments to the facts of the present case, it is clear that there is a delay of more than four months in passing the impugned order of attention from the date of registration of the last offence which has remained unexplained and therefore it can be said that there was no proximate cause for passing the order of detention and therefore unexplained delay makes the ground of detention not proximate and vitiates the order of detention itself.

9. For the foregoing reasons, the petition succeeds and accordingly it is allowed. The impugned order of detention passed against the petitioner - detenu is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith if not required in connection with any other case. Rule is made absolute. No order as to costs. Direct service is permitted.

(A. M. Kapadia, J.)